

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NILSON SACARDI,	:	10-CV-5605(BMC)
	:	
Plaintiff,	:	U.S. Courthouse
	:	Brooklyn, New York
	:	
-against-	:	TRANSCRIPT OF
	:	TRIAL
	:	
	:	January 18, 2012
GREEN FIELD CHURRASCARIA,	:	9:30 a.m.
INC, ET AL,	:	
	:	
Defendant.	:	

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BEFORE:

HONORABLE BRIAN M. COGAN, U.S.D.J.

APPEARANCES:

For the Plaintiff: LAUREN GOLDBERG, ESQ.

For the Defendant  
Green Field and  
Young Dae Kim: DAVID HONG, ESQ.

Hudson Kim: DANIEL D. BAEK, ESQ.

Daniel Lee: DANIEL LEE, PRO SE

Court Reporter: Holly Driscoll, CSR  
Official Court Reporter  
225 Cadman Plaza East  
Brooklyn, New York 11201  
(718) 613-2274

Proceedings recorded by mechanical stenography, transcript  
produced by Computer-Assisted Transcript.

1 THE COURT: Mr. Baek, are you ready to proceed?

2 MR. BAEK: I am, Your Honor.

3 THE COURT: Let's go.

4 MR. BAEK: We would like to call Ms. Leila Soares.

5 MS. GOLDBERG: Your Honor, I am going to object. I  
6 found out this morning that Mr. -- it was confirmed to me this  
7 morning that Mr. Baek plans to call Ms. Leila Soares by  
8 telephone. We discussed how the testimony would be taken at  
9 the pretrial conference and it was agreed that it would be by  
10 video conferencing. I told my client that they had to arrange  
11 it and there was -- that was it, that was what was decided.  
12 It took a lot of effort and was extremely expensive and you at  
13 the pretrial conference asked whether there was any objection  
14 to taking the testimony via video conference. There were no  
15 objections and so you said, okay, the proponents will then  
16 arrange it.

17 I, as I said, I believe that since it was discussed  
18 and agreed upon that it would be by video conferencing that  
19 Ms. Soares' testimony should not be taken. I also do not know  
20 whether there is a notary in Brazil that would be able to  
21 swear her in for her testimony.

22 MR. BAEK: Your Honor, I believe that's completely  
23 untrue. I respectfully refer Your Honor's attention to page  
24 number six where I wrote: Defendant seeks the Court's  
25 permission to have Leila Soares' testimony to be conducted

1 telephonically or via Skype. That's when the discussion  
2 turned to the Court not allowing Skype and I tried --

3 THE COURT: Mr. Baek, let me just interrupt you. My  
4 clear recollection is that we were talking about video  
5 conferencing, not telephone conferencing.

6 MR. BAEK: Your Honor --

7 THE COURT: Whether by Skype or some other means, we  
8 were talking about my looking at the witness, not having a  
9 telephone call.

10 MR. BAEK: Your Honor, I truly believe it was  
11 telephonically and Skype and then the discussion turned to  
12 whether or not Skype is allowed and we made it clear that  
13 Skype doesn't -- is not allowed. So, I've been speaking with  
14 Mr. Breitman and we were trying to work it out but given that  
15 Ms. Soares lives in a suburban area, it would take her two  
16 hours by plane to go to where a video conference would be  
17 allowed, I provided the telephone number to Ms. Clark two  
18 weeks ago and --

19 THE COURT: That's irrelevant, it's irrelevant, all  
20 right. Whatever you gave to Ms. Clark, I didn't know and  
21 apparently Ms. Goldberg didn't know that you were thinking of  
22 a phone call and testimony by a phone call to me is a  
23 different thing.

24 Let me ask you some questions. Why was her  
25 deposition not taken pretrial?

1 MR. BAEK: I believe on the JPTO my understanding is  
2 that Ms. Goldberg had an opportunity to do so but she chose --

3 THE COURT: But you want her testimony. Why didn't  
4 you take it pretrial? (No response.)

5 Okay. Next question. Can't she get a visa to come  
6 here?

7 MR. BAEK: No, I don't think so, Your Honor.

8 THE COURT: Why not?

9 MR. BAEK: My understanding is that she overstayed  
10 in America while working for Green Field and she cannot travel  
11 to USA for a while.

12 THE COURT: All the more reason why you should have  
13 taken a deposition of her at the U.S. Embassy in Sao Paolo.

14 MR. BAEK: I tried that, Your Honor. She made it  
15 clear that the U.S. Embassy will be about two hours by plane  
16 from where she lives and --

17 THE COURT: There's compulsory process in Brazil.  
18 (Pause.)

19 THE COURT: Under Federal Rule of Civil Procedure 43  
20 I have the ability to allow testimony by telephone or video  
21 conference. I'm going to exercise my discretion under that  
22 rule not to allow this testimony. First of all, I'm not  
23 comfortable evaluating the credibility of a witness, and there  
24 are credibility issues in this case, on a telephone. I don't  
25 even know who this person is, I don't know who might be on the

1 other end of the phone. I have to be able to look a witness  
2 in the eye in order to evaluate credibility.

3 Number two, I see no effort to get this witness  
4 pretrial. A deposition could have been used to do that.

5 Number three, the fact that the witness has to  
6 travel two hours, that's a relatively small inconvenience to  
7 me and I think that there's been no showing that process was  
8 unavailable in Brazil to get her to do that.

9 So, I see no reason why this testimony could not  
10 have been done in a proper way. I would also note to the  
11 extent that the plaintiff might want to cross-examine the  
12 witness with regard to documents, there's no ability to do  
13 that on the telephone. So, the testimony is excluded.

14 You may call your next witness, Mr. Baek.

15 MR. BAEK: Thank you, Your Honor. We call  
16 Mr. Hudson Kim to the stand.

17 (Witness sworn by the clerk.)

18 H U D S O N K I M, having been first duly  
19 sworn was examined and testified as follows:

20 THE CLERK: Please state your name for the reporter.

21 THE WITNESS: Hudson Kim.

22 THE COURT: You may be seated.

23 MR. BAEK: Your Honor, can I have one moment?

24 THE COURT: Let me say one more thing about that  
25 ruling which is this, if within the next 30 days Mr. Baek is

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1 able to obtain the witness' deposition either here or in  
2 Brazil and if in Brazil, he pays the travel expenses of  
3 Ms. Goldberg to get there to take the deposition, then I would  
4 accept the transcript of that deposition into evidence.

5 MS. GOLDBERG: Your Honor, to clarify, Mr. Baek  
6 would have to pay for me to travel to Brazil; is that correct?

7 THE COURT: Correct.

8 MS. GOLDBERG: Thank you.

9 THE COURT: Not your time charges, just your  
10 expenses.

11 MS. GOLDBERG: I understand that, Your Honor. Thank  
12 you.

13 THE COURT: Go ahead.

14 Coach.

15 You may proceed, Mr. Baek.

16 MR. BAEK: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. BAEK:

19 Q Just for the record, could you please state your full  
20 name.

21 A Hudson Kim.

22 Q And your date of birth?

23 A September 2nd, 1970.

24 Q Where do you live?

25 A I live 3 Hunters Lane, Roslyn, New York 11576.

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1 Q And who do you live with?

2 A I live with my wife and my two children.

3 Q What do you do for a living now?

4 A I'm a general manager in Green Field, California.

5 Q Let's talk about the Green Field restaurant in Corona.

6 You were the general manager at Green Field Churrascaria in  
7 Corona, New York, correct?

8 A That's correct.

9 Q What were your responsibilities?

10 A I was responsible for all account payables, account  
11 receivables, account cash, do payments, deposits, yes.

12 Q Are there departments or subdivisions that the restaurant  
13 is divided into?

14 A Yeah, the restaurant is divided basically in floor and  
15 kitchen. The floor consist of everything relate to serve the  
16 customers and the kitchen will be anything relate to the  
17 preparation of food and receiving food, storing food, that  
18 part of the restaurant.

19 Q And there are managers?

20 A Yes.

21 Q Tell us about the managers?

22 A There is like John Lim, he's the floor manager; there's  
23 Nilson Sacardi, he's a head chef in kitchen; there's Gaspar  
24 Allende who is the manager responsible for all the  
25 maintenance, anything related to fixing, cleaning.

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1 Q And there's you, right?

2 A Oh, yeah, there's me.

3 Q Anyone else?

4 A No.

5 Q Okay. Approximately how many customers did the  
6 restaurant serve on a daily basis?

7 A Monday through Friday, in a total combined Monday through  
8 Friday would be around 400 to 500 people; Saturday, Sunday  
9 when it was actually very busy, Saturday, Sunday combined 700  
10 to 800 people in average.

11 THE COURT: Over the weekend?

12 THE WITNESS: Over the weekend.

13 THE COURT: So, 400 to 500 during the week and an  
14 additional 700 to 800 over the weekend?

15 THE WITNESS: Yes.

16 Q And how many chefs were there?

17 A One.

18 Q Who is that?

19 A Nilson Sacardi.

20 Q What is the exact title of Nilson Sacardi?

21 A We call head chef in Portuguese we say chef de cuisine.

22 THE COURT: It sounds like French.

23 Q Did Chef Sacardi have any help?

24 A Yes, he has the whole kitchen to help.

25 Q How many people helped him?



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1 A Well, we have to count basically the whole kitchen so  
2 that would be around 12, 12 to 15, 16 approximately.

3 Q For the Court, could you -- do you recall -- could you  
4 tell us some of their names and their positions and their  
5 responsibilities just one by one?

6 A The names, basically I cannot say exact name for all the  
7 peoples but I remember all the -- basically their positions.  
8 So, I could start from after Nilson there was --

9 THE COURT: Before you do that, isn't there some  
10 document that contains a list of all the employees that's kept  
11 in the regular course of business?

12 THE WITNESS: A document, the only document we could  
13 say was maybe a schedule, they did it for a week or something  
14 but nothing that we did that.

15 THE COURT: Okay.

16 Q If I showed you the Kitchen Employee Schedule would that  
17 help you state the names and the responsibilities for the  
18 Court?

19 A Yes, it would.

20 MS. GOLDBERG: Objection.

21 THE COURT: To what?

22 MS. GOLDBERG: I don't believe he testified that he  
23 wouldn't be able to.

24 THE COURT: Actually he said he wouldn't remember  
25 the individuals but he would remember the functions so

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1 Mr. Baek said, if I show you the schedule with the names and  
2 functions, will that help you remember?

3 MS. GOLDBERG: Thank you, Your Honor.

4 THE COURT: He said it would.

5 MR. BAEK: I'm sorry, Judge, one moment.

6 (Pause.)

7 MR. BAEK: I'm marking the document called the  
8 Kitchen Employee Schedule as Defendant's Exhibit E. May I  
9 approach, Your Honor?

10 THE COURT: You may.

11 Q Mr. Kim, I'm showing you what's been marked as  
12 Defendant's Exhibit E. Just please take a moment to take a  
13 look at it.

14 A Uh-huh, okay.

15 Q Have you had an opportunity to read everything?

16 A I see the names now.

17 Q Okay. I'm going to have it back.

18 A Oh.

19 Q Now, just one by one could you tell us the name, position  
20 and their responsibilities?

21 A Okay. So, in the top there would be Nilson Sacardi, the  
22 head chef of the kitchen. Then direct under him it would be  
23 another chef, we call him -- the closest translation would be  
24 assistant chef, that his name is Alberto, he was working  
25 directly with Nilson and working between schedule, when his

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1 day off he would take over. There would be two helpers,  
2 Alejandro, one more, and they're both kitchen helper direct,  
3 they work together with Alberto and Nilson in anything relate  
4 to the finalizing or preparation of food. There would be two  
5 dishwashers downstairs. There would be three salad people --  
6 I remember one dishwasher's name is Armando, the other one I  
7 don't know the name.

8 Q What are the responsibilities of Armando?

9 A He's one of the dishwashers.

10 Q And anything else he would do?

11 A And three salad people.

12 Q No, my question was anything else Armando would do  
13 besides doing the dishes?

14 A Anybody in the kitchen is supposed to be helping Nilson,  
15 so they're all helpers, we considered them help because like  
16 Nilson would ask them to peel shrimp when he's not washing the  
17 dishes, so one way or the other everybody was helping.

18 THE COURT: Do you know of any instances where  
19 Armando peeled shrimp?

20 THE WITNESS: Oh, yes.

21 THE COURT: Okay.

22 THE WITNESS: Actually it was one of his duties.

23 Q Basically you were talking about the salads before I cut  
24 you off.

25 A So, the three people on the salad, that would be Leila,

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1 the salad chef, then it would be Mario who is working the  
2 salad, help in the kitchen too; another person on the salad  
3 but I don't remember his name.

4 Two butchers that are working anything related to  
5 meat, they have to receive meat, sometimes order meat, like  
6 anything be cut for him so he can prepare in kitchen, he cut  
7 it because they have the band saw, the cutting bone machine in  
8 the basement. A laundry lady, her name is Cita, she would do  
9 laundry, laundry, and she was doing like small things for  
10 Nilson like unwrap separate bullions for the soup and sauce in  
11 separate cubes so he can easily put in portion when he need to  
12 cook.

13 Q Anyone else?

14 A There was the guy who work during the nights, Luis, who  
15 would do the cleaning for the kitchen, the floor and even him  
16 was helping Nilson to do -- watch overnight cooking like  
17 turkeys Nilson has to do overnight so somebody have to stay  
18 and look at the turkey, look in the oven, put the sauce over  
19 so it doesn't dry up; black beans during the night Nilson  
20 would leave overnight cooking so somebody would have to stay  
21 looking at the water and filling up, the cooking of the black  
22 beans. Like I say, all these people would be considered  
23 helpers in the kitchen.

24 MR. BAEK: Your Honor, this document in question was  
25 put on Mr. Hong's JPT0 and it was not objected to. I

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1 respectfully admit this in evidence, Your Honor.

2 THE COURT: Any objection?

3 MS. GOLDBERG: No, Your Honor.

4 THE COURT: Exhibit E is admitted.

5 (Defendant's Exhibit E received in evidence.)

6 MR. BAEK: I'll just put it right here.

7 THE COURT: Give it to my clerk please, I'd like to  
8 look at it.

9 MR. BAEK: Okay. (Handing.)

10 THE COURT: Okay, proceed.

11 MR. BAEK: Yes, Your Honor.

12 Q Mr. Kim, could you tell us about the hiring process of  
13 Green Field Churrascaria, if any?

14 A Yes. For on the floor, if John need to fill any  
15 position on the floor like waiters, meat runners or busboy he  
16 would probably call the agents, work agents.

17 Q Work agency?

18 A Yeah, work agency.

19 Q Okay.

20 A To bring -- to send people to do interviews and but  
21 normally he will go through the form that people fill it out  
22 when they're looking for jobs personally so they fill it out  
23 in the restaurant. So, John would talk with people probably  
24 in a section -- the section of the restaurant where it is very  
25 close to the cashier and the office and he will probably talk

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1 with those peoples and decide who he decide to add as the new  
2 employee.

3 Well, in the kitchen -- well, the kitchen was much  
4 simple, whenever somebody needs to work in the kitchen Nilson  
5 just hired somebody and the person would be there working with  
6 him like -- well, Nilson decided who he needed to work with  
7 him so there was not I think a formal interview or anything,  
8 at least what I saw.

9 Q Mr. Kim, like give us an example like how would you know  
10 that it was Chef Sacardi who just hired certain, like that  
11 individual?

12 A Well, it's kind of strange answering this question  
13 because everybody knew that in the restaurant Nilson have like  
14 complete control of the kitchen so he decide who he wants to  
15 work in the kitchen with him so he never asked nobody for  
16 authorization, he need to ask somebody to work with him. So,  
17 it's kind of funny, that question, and since it was brought up  
18 with this lawsuit I kind of feel strange about that. But  
19 anyway, well, Nilson would like work -- be working in the  
20 kitchen and have a new person work with him. Like I was just  
21 walking by and suddenly I see new people and Nilson would say,  
22 oh, hi, Hudson, this is the new guy I hired, let me introduce  
23 him but things like that, it was nothing like he was there  
24 doing interview with people, he knew who he wanted to work  
25 with.

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1 Q Like in that example, what did you do when Nilson said,  
2 this is the guy working, the new guy?

3 A Well, I say -- like one time like the dish washer, a new  
4 dishwasher was working, somebody was working the dishwasher, a  
5 new guy, a person that I never saw and Nilson was talking with  
6 that person and he stopped me and said, oh, this is the new  
7 guy I hired to work in place of someone, who else left the  
8 job, and I just say, oh, well, nice to meet you, in Spanish,  
9 mucho gusto.

10 THE COURT: Who was that dishwasher?

11 THE WITNESS: I don't know because dishwashers, they  
12 would change so often but if it wasn't Armando, it was  
13 somebody else.

14 Q Any other time -- was that the only time or has there  
15 been any other incidents where Chef Sacardi would just say  
16 this is the -- tell you, this is the new guy I just hired?

17 A Yeah, whenever I was stopping by in the kitchen, whenever  
18 I was in the restaurant and for some reason I was just like  
19 walking by Nilson or going through the kitchen because I have  
20 to go to the office, Nilson was saying, ah, Hudson, come here,  
21 this is my new assistant, kitchen assistant, he's going to  
22 help me to work here. Like, for example, one assistant chef  
23 Nilson sent to California to work in the new restaurant my  
24 father opened in Long Beach and he needed to fill that  
25 position and basically after the assistant left the next day

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1 there was somebody else already working and he told me like,  
2 oh, this is Andre, and in Portuguese they say Ande (ph), he's  
3 my new assistant, I just hired him, he's going to work with  
4 me. In that case he didn't work that long because I think --  
5 I guess because he was much older than Nilson and he could not  
6 handle the pace of the work but things like that were like how  
7 I met people there.

8 Q And, for example, Leila Soares was a kitchen employee,  
9 right?

10 A Yes.

11 Q Would you say Chef Sacardi hired her?

12 A Yes.

13 Q And how would you know that, please tell us?

14 A The first time I met Leila she and Nilson came to me, I  
15 don't know why because -- or maybe I was on the floor or in  
16 the office and Nilson just stopped by, say, oh, Hudson, this  
17 is Leila, she's my new assistant cook, I just hired her to  
18 fill the position, I think it was Geralda, I think it was  
19 Geralda, and he just introduced me and I say, oh, nice to meet  
20 you Leila; Leila, welcome to Green Field, like this.

21 Q Have you personally observed Chef Sacardi conduct any  
22 interview for the employment at Green Field Churrascaria?

23 A No. In terms of like John did it before?

24 Q Yeah, sitting down --

25 A No.



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1 Q -- and asking questions?

2 A Not like that.

3 Q Did you personally observe Chef Sacardi fire anyone?

4 A Yes.

5 Q Who is that? And tell us about it.

6 A Well, the whole case, remember Angelo, Angel, because  
7 Angel work in the restaurant like almost the same time Nilson  
8 was working so he was a very, a very good person, a very good  
9 worker but like everybody know, he was fired because he was  
10 coming drunk. It went one or two, three or four times.  
11 Nilson was always complaining to everybody that he had to send  
12 Angelo to home because he would not handle the work because he  
13 was too drunk and one day I heard that Nilson fired him and  
14 but the thing, the most was said because Angelo came to me and  
15 asked me to ask Nilson to give him another chance and I told  
16 Angelo, you know that Nilson gave so many chances, it's not  
17 the first time that happened so I cannot do anything about  
18 that.

19 MS. GOLDBERG: Your Honor, I would ask that the  
20 hearsay part of that answer be stricken.

21 THE COURT: Well, it's not really hearsay. He's not  
22 offering it to show that it's true that Nilson gave him more  
23 chances. I'll overrule the objection.

24 Q Do you recall anyone else?

25 A Personally, no.

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1 Q Did you personally observe Chef Sacardi supervise anyone?

2 A Oh, yeah, of course every time, everybody for any type of  
3 dish he was preparing the moment or anything he need be  
4 prepared so he can cook later on he was giving to almost  
5 everybody.

6 Q Could you give us some specific examples, whom did he  
7 supervise and for what matter?

8 A Well, food preparation, the whole food preparation have  
9 to be pre-prepared. So, this restaurant is like all you can  
10 eat restaurant buffet, so people go there, eat their food,  
11 it's already served in a hot buffet and so whenever the tray  
12 that contain the food is done they have to fill it right away  
13 because we cannot be waiting because this is not an a la carte  
14 restaurant, so all the food in the kitchen was already  
15 pre-prepared.

16 Let me give you an example; the spaghetti, simple,  
17 the most simple stuff, like Nilson would ask Alberto, Sergio,  
18 whoever was working with him, to cook the whole spaghetti box  
19 and they would prepare in a big kettle, big pot and fill up  
20 that with the water, they cook. After that they would remove  
21 the big pot to cool it out, the spaghetti, and they put in  
22 containers. Then there's like sauce, probably Alberto would  
23 be preparing, he was the most capable to prepare the sauce,  
24 cook like -- ask somebody else to chop tomato for him so he  
25 can start preparing the sauce and leave everything on the

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1 side. Everything was pre-cooked or prepared and put in the  
2 refrigerator, whenever the kitchen need to refill one of the  
3 trays like the spaghetti he would --

4 Q Who is "he"?

5 A Nilson. Nilson will probably get the ingredients, the  
6 spaghetti is in the refrigerator, put in the pan, like butter,  
7 I don't know which one he put, and he finalized everything, he  
8 just put his salt and whatever he need to know exactly what is  
9 supposed to be the taste and he just asked somebody to put it  
10 in a tray outside or he would do it himself.

11 Q Did you personally observe Chef Sacardi supervise anyone  
12 else?

13 A Yes. Well, everything depend of the dish what he's doing  
14 because if something relate to meat, he has to place a meat,  
15 we do ask Simone to cut some meat for him or unfroze (sic) the  
16 rabada for him.

17 Q What's rabada?

18 A The oxtail.

19 MR. BAEK: Spelled R A B A D A.

20 Q And what is rabada?

21 A The rabada is the dish we call the oxtail. That would  
22 come like frozen, somebody has to unfroze or somebody has to  
23 cut it in pieces if it do not come in pieces and then it would  
24 be Simone to cut it, then later on bring it to Nilson or to  
25 Alberto, whoever was in the kitchen, they would cook the --

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1 what do you call -- the rabada for I don't know how many hours  
2 and then they would start the clean -- the cleaning probably  
3 was Alejandro because he was a very -- took a lot of time.  
4 Yeah, he was the one who do the vinaigrette. So, probably  
5 like cutting the fat, cleaning up and taking the fat, putting  
6 it on the side and after everything is clean he would put in  
7 refrigerator. The sauce for that rabada probably would be  
8 Alberto, Alberto was the one who would make the majority of  
9 the dishes, and then he would prepare the sauce, like get the  
10 pre-chopped tomatoes and start to cook the tomato sauce so he  
11 can have all the substance of the sauce that needed to get  
12 ready when Nilson need to actually cook the rabada and put the  
13 rabada outside.

14 Q By the way, who supervised Chef Sacardi?

15 A Nobody.

16 Q But somebody must have supervised him?

17 A Well, the previous chef, cook, what's his name, the  
18 person who before hire him and train him.

19 Q Celso in 1997 --

20 A Celso, he probably supervised him.

21 Q I know but in like 2009 and 2010 who would supervise --  
22 tell Chef Sacardi what to do, give orders to him?

23 A Nobody could supervise him because he was the one who --  
24 he's the guy who know what the kitchen is about.

25 Well, my father could supervise him but he never

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1 did.

2 Q Was your father at the restaurant in 2010?

3 A Months -- like he stay like two weeks one time, then he  
4 came another time, like maybe another month -- another week,  
5 so maybe a month combined.

6 Q It might be a repetitive question; did you personally  
7 observe Chef Sacardi give orders to anyone, do you recall any  
8 particular orders?

9 MS. GOLDBERG: Objection.

10 THE COURT: Sustained.

11 Q Did you personally observe Chef Sacardi order supplies  
12 for the kitchen?

13 A Yes.

14 Q Tell us.

15 A Well, he order everything from the Brazilian supply  
16 through the phone because the supplier always call the  
17 restaurant looking for Nilson, so we knew that was the  
18 supplier for the Brazilian products because they always look  
19 for Nilson. Well, he order sometimes the cans, he tell me  
20 what he needed to -- me to buy for him in Restaurant Depot.  
21 He was always ordering something.

22 Q Did you personally observe Chef Sacardi order someone  
23 else to order supplies on his behalf?

24 A Yes.

25 MS. GOLDBERG: Objection.

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1 THE COURT: Sustained.

2 Q Did you personally observe Chef Sacardi tell others to  
3 order the kitchen supplies?

4 MS. GOLDBERG: Objection.

5 THE COURT: What is the objection?

6 MS. GOLDBERG: Your Honor, I think that these are --  
7 these are leading questions.

8 THE COURT: Sustained.

9 Q Did you personally observe Chef Sacardi --

10 THE COURT: If you're about to suggest the answer,  
11 it will be leading again.

12 MR. BAEK: I know, Your Honor, I apologize.

13 THE COURT: Start the question with the word "what."

14 MR. BAEK: Okay.

15 (Pause.)

16 Q What kitchen supplies would Chef Sacardi tell others to  
17 order, if any?

18 MS. GOLDBERG: Objection.

19 THE COURT: Overruled.

20 A Yes, he would ask like Simone to buy meat for him. He  
21 would ask Leila to place order for the cans, like tomato  
22 sauce. He would ask me to buy things from Restaurant Depot  
23 because whenever these delivery companies would not bring  
24 everything, he would tell me that he's missing something and I  
25 need to buy something for him. Like I say, he ordered a lot

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1 of things.

2 Q By the way, what does the word churrascaria mean?

3 A Churrascaria, the closest translation would be house of  
4 barbecue.

5 Q And how is that different from regular house of -- houses  
6 of barbecue in America?

7 A Well, barbecue in Brazil actually has a whole different  
8 meaning, like here it's completely different from a steakhouse  
9 because churrascaria is a place where people go, pay a fixed  
10 price for their meal, they have their -- in their fixed price  
11 everything included except drinks and desserts, so all the  
12 salad bar and the hot food. The barbecue is the main  
13 differentiation of any type of restaurant. The unique style  
14 of this restaurant is people -- a person like a waiter but  
15 he's not a waiter, we call them meat runner, we go in each  
16 table and serve different style of meat, that is we grill or  
17 we bake and we slice portions to each customers and since this  
18 is a buffet, there is no regular menu, the hot food, the  
19 salads, like it would change like seasonally every time of the  
20 year because the whole concept of churrascaria is serve like  
21 seasonal foods, seasonal foods, different type of foods in  
22 every season of the year so that's why the restaurant never  
23 can offer a regular menu for the customers.

24 The only definition of type of food we have is  
25 description of what type of meat, even that sometimes the meat

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1 is not all there because different market or the suppliers  
2 don't have any specific meat but normally it's just the meat  
3 that follow the same, what can I say, regular menu.

4 Q Thank you.

5 You said the dishes would change seasonally?

6 A Yes.

7 Q Would they change every season?

8 A Yes.

9 Q Could you give us -- could you tell us about that?

10 A Yes, it purely depend like the season. Like cold  
11 weather, like in winter we don't serve that much seafood, one,  
12 it is expensive and it is not traditional to eat like seafood  
13 in the cold, at least for us in Brazil I mean. And then in  
14 the summer when it's hot people are ready to either like more  
15 heavy stuff like -- I mean heavy stuff -- light food, like  
16 more salads, more greens, like will completely depend of the  
17 market too.

18 Q And who would decide to change the dishes every season?

19 A Nilson.

20 Q Anyone else?

21 A No.

22 Q By the way, were you raised in Brazil?

23 A Yes, I live in Brazil until I was 25, 27 -- 27.

24 Q And then you came to America?

25 A Yes.



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1 Q Did all the employees get hourly wages?

2 A Yes, all the employees, yes.

3 Q What about the managers?

4 A Except the managers, yes.

5 Q Did Gaspar Allende?

6 A Gaspar Allende, John Lim, James before John Lim, Nilson,  
7 I, my father, my stepmom, all these people received a salary.

8 Q Did you keep the number of hours the non-managers worked?

9 A Yes.

10 Q And how?

11 A We have a punch system that with a computer by the  
12 entrance of the kitchen so that would be by the side of the  
13 cashier so people who work have to start work, they have to  
14 collect their card, their punch card in the wall that was  
15 hanging on the wall, they slide the card and put it back, the  
16 card, that's how we could know when you start to work and when  
17 they are leaving the work.

18 Q Would managers Gaspar Allende, John Lim, you, your father  
19 and your stepmother also --

20 A No.

21 Q -- keep track of the number of hours?

22 A No.

23 Q And what about Chef Sacardi?

24 A Of course not.

25 Q Do you know how much the managers were getting paid

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1 approximately?

2 A Yes, all the same, about a thousand dollars.

3 Q Chef Sacardi is responsible for making chicken wings,  
4 right?

5 A Yes, he was responsible for chicken wings, anything.

6 Q What about -- let me just -- I'll just kind of give you  
7 all the food.

8 A Uh-huh.

9 Q Would he be responsible for making spareribs, oxtails  
10 chicken cutlets, paella, codfish, rice dishes, seafood soup,  
11 feijoada and spaghetti?

12 A Yes, of course.

13 Q But what do you mean by he's responsible?

14 A Well, one way or the other he has to supervise from the  
15 beginning to the end, like receiving or the preparation or the  
16 actual cooking, one way or the other he has to supervise that  
17 because if we have a complaint in the restaurant, the waiter,  
18 the floor manager would tell Nilson because he's the one who  
19 know how to prepare that food.

20 Q How many hours a day would Chef Sacardi spend his time  
21 cooking?

22 A Maybe half of his time, 50 percent maybe. Maybe less,  
23 I'm not sure.

24 Q Like what would he do when he's not cooking?

25 A Well, he has a lot of things to do, he have to show the

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1 people what they're supposed to be preparing for him, he has  
2 to talk with John frequently to find out what is the  
3 reservation schedule, how many people are we going to have on  
4 the weekend or the next week so he know how much he needs to  
5 order. They have like their regular meetings like every week,  
6 almost every day whenever they are together.

7 Q Well, why would he have a meeting with John -- it is John  
8 Lim, right?

9 A Yeah, John Lim, the floor manager.

10 Q Why would he have a meeting with John Lim?

11 A Well, how much he -- how come, he knows how much food he  
12 needs to order, how much needs to get pre-prepared for the  
13 weekend if he doesn't know how many people are coming in the  
14 restaurant.

15 Q And John Lim would know how many people are coming?

16 A Yeah, because since he was floor manager he was  
17 responsible to take all reservations and would be ready for  
18 the customers when they come.

19 Q And what time would Chef Sacardi come to work?

20 A We open at 9:00, nine. On the weekend maybe his schedule  
21 is only in the afternoon. So, normally during the weekdays he  
22 would be going in the morning and leave in the afternoon. On  
23 the weekends he would probably come maybe -- Sunday maybe he  
24 come early but Saturday I'm pretty sure he would come in the  
25 afternoon and leave about 9, 10:00.

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1 Q Now, I want to get the clear picture. So, Chef Sacardi  
2 would come around 9:00, right?

3 A Yes.

4 Q What time does the restaurant open to the public?

5 A Eleven o'clock.

6 Q Eleven a.m.?

7 A Yes, 11 a.m.

8 Q Would that be in time for the lunch hour?

9 A Yes.

10 Q And what would Chef Sacardi do from the time he arrived  
11 at the restaurant at 9:00 until 11, for example?

12 A Okay. So, he would go there, he'd go inside the  
13 restaurant, he'd change his clothes, do whatever he need to do  
14 to start to get ready to cook. So, he will go back to the  
15 kitchen and start to work with whatever his assistants were  
16 working, Alberto, Alejandro, Sergio, whoever was with him in  
17 the moment, and they would start to cook the food because they  
18 have only two, three hours to just prepare food.

19 So, they would like be getting all this food already  
20 pre-cooked, pre-prepared and just meats, everything, and by  
21 11:00 was telling this day we have to get french fries because  
22 we're going to have that amount of people, we need to have  
23 this -- no, no, don't put this because it is dinner time menu,  
24 just put like maybe not codfish, put the bulina (ph) -- in  
25 English it's -- how do you call it.

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1 THE COURT: Soup stock?

2 THE WITNESS: No, no, it's dumpling. And, again,  
3 telling people what they're supposed to prepare and he was, of  
4 course, cooking because it was a short time so he needed to  
5 get ready until 11:00.

6 Q So, would it be fair to say all the hot buffet would be  
7 ready for the customers at 11:00?

8 A Yes.

9 Q It would be filled?

10 A Yes.

11 Q Then what would Chef Sacardi do from 11 a.m.?

12 A Well, since the moment he came in the restaurant and  
13 finished to fill all the buffet it was very intense, you have  
14 to work hard, he would go in the back, take a rest, take his  
15 lunch or whatever he do, he go to the back section and do his  
16 thing in the back.

17 Q Where is this back in the restaurant?

18 A The VIP section, the F section.

19 Q And how long would he stay there?

20 A For a while. I could not say how long. Maybe one hour,  
21 one hour and a half, I don't know.

22 Q Are any other employees allowed to go into the same  
23 space, the same place?

24 A No.

25 Q Why not?

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1 A Well, everybody is working so they cannot go there. I  
2 don't know, they don't go there.

3 Q So, what would Chef Sacardi do after he takes his rest in  
4 the room?

5 A Well, if he doesn't have more cooking to do because the  
6 rest of the lunch hour will be very limited from 1 to like  
7 maybe 1, 2:00 and then there would not be that much customers,  
8 if it wasn't needed to refill any of the stations of the hot  
9 buffet he would start to tell people in the kitchen that he  
10 need -- that he need to make this ready, that ready so he can  
11 start to maybe prepare another dish for the next cook -- the  
12 assistant cook, Alberto, when at night he come he have  
13 something to get ready to cook when the customers come in for  
14 dinner; he was telling -- maybe depending on the day he would  
15 check in the kitchen what he need to order, depend of the day.  
16 He would talk with John, John Lim to see what is the schedule  
17 of the restaurant. He was doing his thing.

18 Q Then what, would he go back to cooking?

19 A Sometimes he was doing some preparation, yes. Normally  
20 he would be -- he would let the assistant to do the job or the  
21 helpers or the people in the basement for him.

22 Q And anything else?

23 A Well, I believe that was whatever he need to do to get  
24 the food ready and he was like for sure things -- like  
25 everything was ready, everything was prepared, everything was

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1 already told to them in the kitchen, he'd just go home.

2 Q What time would that be?

3 A It, depends like sometimes when he's not that busy maybe  
4 one hour, two hours earlier.

5 Q What time would that be?

6 A Like, for example, if he come in during the week, his  
7 schedule is supposed to be nine to four or five, he would  
8 leave at 4:00, maybe 3:30, something, depend how much was  
9 business. Maybe in a weekend when he's supposed to be more  
10 active at night because the business has more at night, by 9,  
11 10:00 he probably would leave to go home.

12 Q By nine or ten?

13 A Yeah, he would -- like I think Saturdays he would come a  
14 little later, like maybe 2 or 3:00. I don't know exactly.

15 Q Let's talk about Saturday for a second. What time would  
16 Chef Sacardi come on a Saturday?

17 MS. GOLDBERG: Objection. We've already had this  
18 discussion, he's already testified his hours were --

19 THE COURT: Sustained.

20 MR. BAEK: Okay.

21 No further questions, Your Honor.

22 THE COURT: All right.

23 Cross-examination?

24

25 CROSS-EXAMINATION

*H. Kim - cross - Goldberg*

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1 BY MS. GOLDBERG:

2 Q Mr. Kim, do you recall testifying at your deposition in  
3 this case on September 6, 2011?

4 A Yes.

5 Q And do you recall swearing to tell the truth before you  
6 testified at your deposition?

7 A Yes.

8 Q I'm going to read part of your deposition, page 1 --  
9 page 187, line 22, and then I'll continue on to page 188:

10 "Question: Is it fair to say that Mr. Sacardi  
11 usually worked till about ten p.m. every night?

12 "Answer: Not every night but some nights, yes.  
13 Would you say most nights? Depends --

14 "Answer: Depends on the schedule."

15 THE COURT: Ms. Goldberg, if you slow down you're  
16 more likely to get it right, okay, slow down.

17 Q "Question: Would you say most nights?

18 "Answer: Depends on the schedule but, yes, most  
19 of the time."

20 Do you recall saying that?

21 A Yes, I think so.

22 Q And you said that Sunday -- Sunday through Thursday the  
23 restaurant was open till 11, 11 p.m.; is that correct?

24 A Yes, correct.

25 Q Again I'm going to read another part from your



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1 transcript, from the transcript of your deposition.

2 (Pause.)

3 Q This is page 22 -- sorry -- page 22 continuing on to page  
4 23:

5 "Question: John Lim, for what years was he floor  
6 and kitchen manager?

7 "Answer: I'm not sure when he started, he was  
8 already there too but until 2010.

9 "Question: Was he acting as floor and kitchen  
10 manager from 2004 through 2010?

11 "Answer: Yes."

12 Do you recall saying that?

13 A Yeah, I might say that, yeah.

14 Q Was James Lee the floor manager?

15 A He was doing the same thing that John was doing.

16 Q And do you recall again your at your deposition page  
17 24 -- page 24, line six:

18 As the floor manager what were James --

19 THE COURT: Question.

20 Q "Question: As the floor manager what were James'  
21 responsibilities?

22 "Answer: Well, oversee all the waiters, bus, meat  
23 runners, everybody who works in the service area, prepare  
24 their schedules, prepare their payrolls, oversee the  
25 deliveries. Basically anything regarding the service in the

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1 restaurant, he was responsible for that.

2 "Question: John Lim as the floor and kitchen  
3 manager, what were his responsibilities?

4 "Answer: Same as James, as the floor manager but in  
5 the kitchen, he was overseeing like anything that happened in  
6 the kitchen, like check if the kitchen is properly clean,  
7 check because he had the Health Department certificate so he  
8 could oversee those stuff because Nilson never got the health  
9 certificate so he could not get the inspection from the Health  
10 Department and those things John was the person responsible  
11 for in the kitchen."

12 Do you recall saying that?

13 A Yes.

14 Q I'm going to read from your deposition, page 79,  
15 beginning on line 22, continuing on to page 80.

16 "Question: --

17 MR. BAEK: I'm sorry, could you speak a little  
18 louder.

19 MS. GOLDBERG: Oh, sorry, page 79 beginning on line  
20 22.

21 "Question: Did you create work schedules for all  
22 the employees?

23 "Answer: No.

24 "Question: Did anyone?

25 "Answer: The manager does, my co-managers.

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1 "Question: Who were those?

2 "Answer: John Lim and James Lim and lately after  
3 James left Gaspar started to do it."

4 Do you recall saying that?

5 A Yes.

6 MR. BAEK: Your Honor, under FRE 106, if I'm not  
7 mistaken, can I have Ms. Goldberg read the other half of  
8 whatever she read.

9 THE COURT: Any objection?

10 MS. GOLDBERG: Well, when you say "the other half,"  
11 I mean I've read --

12 THE COURT: What portion?

13 MR. BAEK: You stopped at page --

14 THE COURT: Tell her what you want her to read.

15 MR. BAEK: I want her to read the next question and  
16 answer.

17 THE COURT: All right. Any objection?

18 MS. GOLDBERG: Okay. I'll read the next question  
19 and answer.

20 "Question: How often were the employees'  
21 schedules created?

22 Basically --

23 THE COURT: Answer.

24 Q "Answer: Basically almost every week because the  
25 kitchen staff was always changing so Gaspar Nilson and John

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1 has to sit down, check how the schedule worked for the  
2 employees in the kitchen so they have to see what is the best  
3 schedule especially in 2002 -- dot, dot, space, space -- we  
4 have to let go so many people because the economy was so bad  
5 at that time, we have to short the working hours for almost  
6 everybody so in that time was almost every month Gaspar, John  
7 and Nilson were sitting down to try to figure out schedule."

8 THE COURT: Was that your testimony at deposition?

9 THE WITNESS: Yes.

10 Your Honor, but can I --

11 THE COURT: No, you can't.

12 Q Mr. Kim, do you recall that I asked you who the managers  
13 were?

14 A Yes.

15 Q At your deposition?

16 A Yes.

17 Q And do you recall who -- do you recall Mr. Sacardi being  
18 present at your deposition?

19 A Yes.

20 Q And do you recall him sitting next to me?

21 A Yes.

22 Q I'm going to read to you a portion of the -- another  
23 portion of the transcript, page 20 beginning with line four  
24 and then I will have to read a portion from page 21 as well.

25 MR. BAEK: I'm sorry, which page, Ms. Goldberg?

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1 MS. GOLDBERG: Page 20. Page 20 beginning with line  
2 four.

3 Q "Question: Who were the managers from 2004  
4 through 2010?

5 "Answer: James Lee and John Lee -- John Lim,  
6 excuse me, but just be clear, I had other managers, of course,  
7 I had Gaspar Allende but he wasn't involved in the payroll, he  
8 was more involved in like fixing, doing repairs there, oversee  
9 the other employees too and checking supplies too, all those  
10 things.

11 "Question: From 2004 through 2010 aside from  
12 James Lee, John Lim and Gaspar, were there any other managers  
13 that you had at Green Field?

14 "Answer: Yes, we had Orlaino Correia.  
15 O R L A I N O, C O R R E I A. We call him Lino (ph).

16 "Question: So, you mentioned James, John, Gaspar  
17 and Orlaino. Were there any other managers during 2004  
18 through 2010?

19 "Answer: Oh, yes, he wasn't manager, he was more  
20 like maitre d' but we considered them managers too because  
21 they were responsible to take care of the employees too. I  
22 forget his name.

23 "Question: We'll leave a space in the deposition  
24 and when you think about it, if you remember it you can let us  
25 know.

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1           Page 21, line nine:

2           "Question: Does Orlaino Correia sometimes go by the  
3 name of Leo?

4           "Answer: No, no, that's another individual.  
5 They're the other one, Leo is the other man.

6           "Question: That was the fifth person that you  
7 were thinking of?

8           "Answer: Yes."

9           Do you recall stating that?

10       A     Yes.

11           MR. BAEK: Your Honor.

12           THE COURT: Yes.

13           MR. BAEK: May I ask Ms. Goldberg to also read on  
14 the same page, page 21 starting with line 22.

15           THE COURT: To where?

16           MR. BAEK: Just that question and answer, Your  
17 Honor.

18           THE COURT: All right. Any objection?

19           MS. GOLDBERG: No, that's fine, Your Honor.

20           Page 21, line 22 you said?

21           MR. BAEK: Yes.

22           MS. GOLDBERG: "Question: John was floor and  
23 kitchen manager?

24           "Answer: Yes, because before that time James and  
25 John was working together, John was helping James with the

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1 floor and in the kitchen he was helping Nilson. He was help,  
2 basically co-manager for both."

3 MR. BAEK: Thank you.

4 Q Your father left the restaurant in 2007; is that correct?

5 A Yeah, he moved to California.

6 Q And when he moved to California, is that when you started  
7 overseeing the restaurant?

8 A I started to have more responsibility, yes.

9 Q And you supervised John Lim and James Lee, correct?

10 A You can say I supervised, yes.

11 Q Mr. Kim, from Green Field restaurant in Corona, New York,  
12 how many employees have you kept in touch with?

13 A After I stopped working?

14 Q After you stopped working at the restaurant how many  
15 employees did you keep in touch with?

16 A Maybe eight, ten.

17 Q Eight to ten. And who were those individuals?

18 A That would be John, Gaspar of course, Leila, Patricio,  
19 Luis Nieves, Coco, Luis, the cleaning guy, whenever I need  
20 help in my house I give him a call. Basically that's it I  
21 think. Oh, yes, Cita.

22 Q So, you've kept in touch with those eight individuals?

23 A Yeah.

24 Q How much time would you say you spent in the kitchen on a  
25 daily basis?

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1 A That question is so difficult to answer precisely because  
2 we are always walking by to the kitchen, we always talk with  
3 people, you have to understand we're -- like everybody was  
4 very friendly, everybody was talking with each other there so,  
5 I don't know, maybe one time I was speaking with Leila for  
6 more than normal, maybe I was talking with Nilson a little bit  
7 more normal than the work supposed to be doing that but I  
8 don't know, I would say maybe, I don't know, maybe ten, twenty  
9 percent, I don't know, I really don't know for sure exact  
10 numbers.

11 Q At your deposition didn't you say -- didn't you say that  
12 it was about 30 minutes?

13 MR. BAEK: Can I have the page and line number  
14 please?

15 MS. GOLDBERG: I'm asking him a question, whether he  
16 remembers testifying to that.

17 A I might say that but I don't remember.

18 Q Again, let me read from your deposition, page 76, line  
19 24 -- line 22, excuse me.

20 "Question: On an average basis how much time  
21 would you say you did spend in the kitchen?

22 "Answer: It's hard to say, I don't know, 30  
23 minutes."

24 A Yeah, probably I say that.

25 Q And what would be the reasons that you would be in the



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1 kitchen?

2 A Talk to people.

3 Q What people would you talk to?

4 A Anybody that have something to say to me, I have  
5 something to say to them or just normal conversation.

6 Q What would you talk about during any of those  
7 conversations?

8 A Like Nilson was saying how my wife was, if my kids are  
9 okay, or Leila was asking how is she doing, she's okay,  
10 because she's having some problems with her family in Brazil.  
11 I would ask Leila if she could prepare some, what you call  
12 chicken dumpling because she do that in her house as for  
13 catering for business, so I would ask her if she can prepare  
14 food for my daughter's birthday or my son's birthday or I  
15 could ask Nilson like how was the day, what are you going to  
16 do for this weekend, do you have any plans, things like that,  
17 just talking.

18 Q So. Is it fair to say that it would be -- you'd be  
19 talking about personal lives?

20 A Most of the time, yes.

21 THE COURT: Ms. Goldberg, where are we going with  
22 this?

23 MS. GOLDBERG: We're moving on, Your Honor.

24 THE COURT: It is not a deposition, all right, it is  
25 a cross-examination, review the points, you make the points,

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1 you go on to the next witness.

2 Q You had grillers at the restaurant, correct?

3 A Yes.

4 Q And those grillers were responsible for making the meat  
5 that was passed around to the customers, correct?

6 A Yes, to cook the meat.

7 Q And --

8 A Grill the meat.

9 THE COURT: Mr. Kim, you have to speak up so the  
10 reporter can write down what you're saying.

11 THE WITNESS: Okay.

12 Q And the butchers were responsible for giving the meat to  
13 the grillers to prepare, isn't that correct?

14 A Yes, actually their task was to cut, skewer the raw meat  
15 and leave it ready so the grill guys could go there, if  
16 they're busy somebody would bring the meat to them.

17 Q Again I'm going to read part of your transcript, page  
18 145 -- 145, line two:

19 "Question: Are you aware of any employees that  
20 Mr. Sacardi fired?

21 "Answer: No. It wasn't direct from him. I know  
22 I had a complaint with one of the assistant one time he asked  
23 to Gaspar talk to that person so that person could be fired.

24 "Question: Did Gaspar follow through and fire  
25 that person?

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1 "Answer: Yes, but I don't remember the name of  
2 that person, I just remember the circumstance that happened."

3 Do you recall testifying to that?

4 A Yes.

5 Q Is it your testimony today that Mr. Sacardi fired Angelo?

6 A Yes.

7 Q And it's your testimony today that you personally  
8 observed Mr. Sacardi fire Angelo?

9 A Not personally but my testimony I knew about the firing  
10 because Angelo asked me to ask Nilson to give him a second  
11 chance.

12 Q So, it's based on this comment that you're saying that  
13 Angelo made to you that you believe Mr. Sacardi fired Angelo?

14 A Yes, because Angelo was, like I told you, he was working  
15 a long time there, we even help him to get his green card so I  
16 was kind of surprised that actually Nilson would actually fire  
17 him because he had like a very close relationship that he  
18 worked so many times but I guess it was very bad because what  
19 I heard.

20 Q Mr. Kim, I'd ask you to answer my question. Your answer  
21 is nonresponsive.

22 A Oh, yes.

23 Q Based on Angelo's statement to you, is that your basis  
24 for believing that Mr. Sacardi fired Angelo?

25 A Nilson was the only one who could fire him so I have to

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1 believe him.

2 Q Could John fire individuals?

3 A Yes.

4 Q So, is it your testimony today that you would not be  
5 introduced to a new kitchen employee until that person  
6 actually started working?

7 A What do you mean introduce, like come back introduce to  
8 me a new person?

9 Q Well, you testified earlier that you'd walk in the  
10 kitchen and when you didn't know someone, Nilson would then  
11 show you and introduce you to a new employee, is that not what  
12 you testified to earlier?

13 A No, no, no, Nilson would tell me, oh, by the way, Hudson,  
14 this is the new guy. He was telling me this was the new guy.

15 THE COURT: Mr. Kim, listen carefully. What she's  
16 asking you is this, would you meet kitchen employees -- would  
17 you know that a new kitchen employee had been hired before you  
18 saw that employee in the kitchen?

19 THE WITNESS: No.

20 THE COURT: Would you know that?

21 THE WITNESS: No, I wouldn't know.

22 Oh, I'm sorry, I would know when I see the payroll  
23 because like kitchen work, I have separate cash and ask John  
24 who is this person working in the kitchen and John would tell  
25 me he's the new guy that Nilson hired. That's the only way I

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1 would know it too.

2 Q Can you give me any specific names of people you know  
3 that Mr. Sacardi hired?

4 A By name I could say a few but I know for a fact that he  
5 hired everybody else in the restaurant. Should I give the  
6 names?

7 Q Please tell me the names of the individuals you know that  
8 Mr. Sacardi hired.

9 A Alberto, Sergio, Angelo, Simone, Armando, Cita, Leila,  
10 Mario, people I remember, yes.

11 Q Mr. Kim, do you remember -- withdrawn.

12 I'm going to read a portion of your transcript, page  
13 142 -- page 142, line 14 -- line 12, excuse me.

14 "Question: Can you please tell me the names of  
15 the individuals who he hired.

16 "Answer: Yes, basically Leila, the person you  
17 just before, Geralda, Alberto. Well, basically all the  
18 staffing. In my time of management basically everybody was go  
19 through Nilson."

20 Page 144, line 12.

21 "Question: Besides Leila, Geralda and Alberto can  
22 you give me any other specific names of people that you know  
23 Nilson Sacardi hired?

24 "Answer: Not specific."

25 So, is it correct to say that at your deposition you

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1 couldn't think of any other names besides Leila, Geralda and  
2 Alberto that you knew specifically that Mr. Sacardi hired; is  
3 that correct to say?

4 A Yeah, I think so.

5 Q But yet today at trial you think of several more that, in  
6 fact, you know he hired?

7 A Yes.

8 Q And, again, it's your testimony that you know he hired  
9 those people because Mr. Sacardi introduced them to you?

10 A Yes.

11 Q And Mr. Sacardi would introduce them to you in the  
12 kitchen after they had already started working?

13 A Yes.

14 Q Mr. Kim, isn't it true that Mr. Sacardi's primary  
15 responsibility was cooking the hot dishes for the hot bar?

16 MR. BAEK: Your Honor, objection, that calls for a  
17 legal conclusion. I'm just --

18 THE COURT: She asked what Mr. Sacardi's primary  
19 responsibility was, how is that a legal conclusion.

20 MR. BAEK: My understanding is the word "primary" is  
21 actually the statutory word.

22 THE COURT: I'm the fact finder, I'm not taking it  
23 that way.

24 MR. BAEK: Okay. Thank you, Your Honor.

25 THE WITNESS: Okay. No, his primary function is to

*H. Kim - cross - Goldberg*

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1 run the kitchen.

2 Q Mr. Kim, again I'm going to read a page from your  
3 deposition, page 138:

4 Is it fair to say that Nilson Sacardi's primary duty  
5 was to cook the dishes for the hot bar?

6 "Answer: Yes. Is one of his function. Yes.

7 "Question: Would you say that -- that was his  
8 primary function?

9 "Answer: Yes."

10 Do you recall giving that answer?

11 A Yes.

12 Q So, at trial here today are you now -- is it not fair to  
13 say that you're changing your answer from what you testified  
14 at deposition?

15 MR. BAEK: Objection, Your Honor.

16 THE COURT: Sustained.

17 Q You testified earlier today, right, that you didn't know  
18 that Mr. -- it was your belief that Mr. Sacardi did not  
19 interview employees before they started; is that correct?

20 A Interview, no. I'm not sure if I understand the last  
21 question.

22 Q You stated that Mr. Sacardi, to your knowledge, did not  
23 interview individuals before they were -- before they were  
24 hired, correct?

25 MR. BAEK: Objection.

*H. Kim - cross - Goldberg*

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1 THE COURT: What is the objection?

2 MR. BAEK: She's misstating the testimony.

3 THE COURT: Well, the witness will tell us if that's  
4 what he testified to.

5 MR. BAEK: Okay, Your Honor.

6 A Well, not in my knowledge, I didn't view personally the  
7 interview if that's what you're saying.

8 Q And Mr. Sacardi never disciplined anyone, isn't that  
9 correct?

10 A Well, Nilson is not like a person to discipline. The  
11 problem is when he get angry he curse a lot.

12 Q Mr. Kim, I'd ask that you answer my question.

13 A Yes.

14 Q Isn't it correct that Mr. Sacardi never disciplined  
15 anyone?

16 A No, he disciplined.

17 Q And who is it that he disciplined?

18 A Well, the word discipline, I don't know if it is the same  
19 thing but he was cursing somebody to not make something he  
20 asked to do and that person basically would do and after he  
21 got yelled at.

22 THE COURT: Let me ask you this, did he ever dock  
23 somebody's pay?

24 THE WITNESS: Cut his payment?

25 THE COURT: Yes. Did he ever say: I'm fining you



*H. Kim - cross - Goldberg*

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1 \$50 because of something that you did, for example?

2 THE WITNESS: No, he always told people like I'm  
3 going to fire them if you don't do that, I'm going to find  
4 somebody else.

5 THE COURT: Did he ever change their shift as a  
6 punishment?

7 THE WITNESS: They send them home.

8 THE COURT: He sent them home?

9 THE WITNESS: Yeah.

10 THE COURT: Who did he send home?

11 THE WITNESS: Like Angelo several times.

12 THE COURT: You heard him say to Angelo, "Angelo, go  
13 home."?

14 THE WITNESS: He told me I sent Angelo home because  
15 he was drunk so I cannot let him cook the food.

16 THE COURT: Okay.

17 Q You're saying Mr. Sacardi told that to you?

18 A Yes.

19 Q So, you didn't actually witness Mr. Sacardi telling  
20 Angelo to go home, correct?

21 A No. I wasn't --

22 Q Again I'm going to read from your deposition, page 139 --

23 A I'm sorry, I do remember one case. He was yelling with  
24 Armando because Armando didn't do his job, I think it probably  
25 was the peeling of the shrimp, and Nilson told him to do it

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1 right away or he going to get fired, yeah, and Armando did  
2 everything what he asked for.

3 Q How many times did you hear him do that?

4 A I heard him screaming with Armando, then I went and  
5 checked what happened, yeah.

6 Q So, you're testifying this is something you heard once?

7 A The screaming, yes for this matter of discipline or  
8 whatever, yes.

9 Q I'm going to read from your deposition, page 139,  
10 line 20:

11 "Is it fair to say that Mr. Sacardi never  
12 disciplined anyone?

13 "Answer: No.

14 "Question: He never disciplined anyone?

15 "Answer: No, that was one of the complaints  
16 because he was very nice with everybody."

17 Do you recall testifying to that?

18 A Yeah.

19 Q Did there come a time when Daniel Lee was introduced to  
20 the restaurant as the new owner?

21 A Yes.

22 MR. BAEK: Your Honor, objection, that's beyond the  
23 scope of the direct.

24 THE COURT: Well, he's a party witness, she could  
25 recall him in her rebuttal case if she wanted to. We'll

*H. Kim - cross - Goldberg*

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1 eliminate that. I'm going to let her go ahead with the  
2 question.

3 MR. BAEK: Thank you, Your Honor.

4 Q And can you tell me when that was?

5 A End of September 2010 -- no, 2010, yes.

6 Q And can you tell me who was there when Daniel Lee was  
7 introduced as the new owner?

8 A That's -- he was introduced to me, I came back from  
9 California and he was already there. My father told me that  
10 there will be somebody in the restaurant and that person will  
11 be the new guy, the new owner.

12 Q Did your father say to you that he -- withdrawn.

13 Did Daniel Lee fire John Lim?

14 MR. LEE: Objection, Your Honor, hearsay.

15 THE WITNESS: I wasn't present.

16 THE COURT: Overruled.

17 Do you know whether Daniel Lee fired John Lim?

18 THE WITNESS: Just from John.

19 Q And do you know -- withdrawn.

20 Did there come a time when you gave Daniel Lee the  
21 key to your father's office?

22 A Yes.

23 Q And when was that?

24 A In the middle of October.

25 Q And why did you do that?

*H. Kim - cross - Goldberg*

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1 A Because I was ordered to.

2 Q And who ordered you to do that?

3 A My father.

4 Q And who was overseeing the restaurant in October of 2010?

5 A I guess my father and Daniel.

6 Q And who was overseeing the restaurant in November of  
7 2010?

8 A Daniel.

9 Q Is it fair to say that you were overseeing the restaurant  
10 through September of 2010?

11 A Yes.

12 MS. GOLDBERG: Your Honor, just one more minute but  
13 I'm almost wrapping up, if I could have just one more minute.

14 (Pause.)

15 Q Isn't it true that Mr. Sacardi would make fresh new  
16 dishes for dinnertime service?

17 A Yes.

18 Q And isn't it true that sometimes Mr. Sacardi would have  
19 to make dishes over because the dish would run out at the hot  
20 bar?

21 A Over? What do you mean?

22 Q He would have to make it again, he would have to make it  
23 another time because the dish ran out at the hot bar?

24 A Yeah, of course, yeah.

25 Q And isn't it true that some of Mr. Sacardi's dishes

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1 required him to prepare a day or two in advance?

2 A I could say all the dishes have to be cooked in advance,  
3 cooked previous to that day of the actual cooking.

4 Q Mr. Sacardi ordered from Triunfo once a week, isn't that  
5 correct?

6 A Once, twice, he was always ordering every week.

7 Q But isn't it true that it was usually once a week?

8 A Usually, yes.

9 Q And Mr. Sacardi would order by making a telephone call;  
10 is that correct?

11 A No, he was receiving a phone call, he never called.

12 Q He would order by receiving a phone call; is that  
13 correct?

14 A Yes.

15 Q And how long would his phone conversation be?

16 A Well, sometimes it was very big or sometimes he was just  
17 chatting because -- sometimes it was very long conversation  
18 because the supplier, Joao, and they were talking.

19 Q On average would you say it would be approximately five  
20 to ten minutes?

21 A Yeah, it could be.

22 Q Well, I'm asking would that be a fair average, five to  
23 ten minutes?

24 A I don't know average. I know that sometimes they were  
25 talking, sometimes they were just getting the order.

*H. Kim - cross - Goldberg*

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1 Q What was the longest phone conversation that you ever  
2 observed Mr. Sacardi have with Triunfo?

3 A Numbers, maybe five, ten minutes, I don't know about  
4 that.

5 Q Isn't it true that the restaurant served approximately  
6 the same amount of people every week?

7 A No, because especially the restaurant in New York through  
8 December until May or June or beginning of June we have more  
9 business, I mean more customers but through after that, after  
10 July 4th Independence Day all the way close to December the  
11 business was very slow, so we at least -- it's very drastic  
12 amount of people that we receive during the different time of  
13 year.

14 Q So, would you say from December to June it would be  
15 somewhat consistent?

16 A It's not consistent but in overall it was much better.

17 Q What do you mean overall it was much better?

18 A I mean if you count like the average of people we get  
19 from one month, it would go over the amount of the other  
20 month, like from the December to May, June, it would be, what,  
21 maybe we can count like maybe 30,000, 20,000 people in a  
22 month; the other month, like the slowest month would be much  
23 lower, maybe 18, 15, depends, I don't know.

24 THE COURT: Are we there yet?

25 MS. GOLDBERG: Very close. Very close.

*H. Kim - cross - Lee*

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1 (Pause.)

2 MS. GOLDBERG: No further questions.

3 THE COURT: All right. Any other questioners?

4 Mr. Lee?

5 MR. LEE: Yes, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. LEE:

8 Q My name is Daniel Lee. I am defending myself on this  
9 matter.

10 Hudson, when did we first meet?

11 A End of September 2010.

12 Q Is it fair to say that you were at the restaurant five  
13 times a week until April 2011?

14 A April 2011, some weeks yes, some weeks no.

15 Q Can you recall your deposition that you gave?

16 A Yeah.

17 Q I'd like to read from page 173.

18 A Uh-huh.

19 THE COURT: Line?

20 MR. LEE: Let me get it.

21 Q Page 173, lines 22 to page 174, line two:

22 "Question: So, until about April of 2011 you were  
23 still going to the restaurant five days a week?

24 "Answer: Yes. Well, my father wanted me to stay  
25 going there until he was sure that Daniel could take over the

*H. Kim - cross - Lee*

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1 business without any problem."

2 Is that accurate?

3 A Yes.

4 Q Did you show me how the restaurant worked?

5 A Yes.

6 Q So, from what period did you show me how the restaurant  
7 worked?

8 A Maybe until November.

9 Q Of what year?

10 A 2010.

11 Q Again, I'd like to read from your sworn testimony.

12 Please verify if this is correct, referring to page  
13 203, lines two to four:

14 "Question: So, from September to June you showed  
15 Daniel how the restaurant worked?

16 "Answer: Yes."

17 A Say it again.

18 Q "Answer: Yes."

19 A No, no, the period of time you're talking.

20 Q So, from September to June --

21 A June.

22 Q Is that an accurate statement?

23 A Yes, yeah, it would be.

24 Q If I were to show you some bank statements from the  
25 restaurant, would you be able to recognize them?



*H. Kim - cross - Lee*

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1 A Yes.

2 MR. LEE: Your Honor, can I approach the witness?

3 MR. BAEK: Your Honor, objection, irrelevant.

4 THE COURT: I don't know if it is relevant or not.

5 Right now he's just showing him bank statements.

6 They have to be marked as exhibits, Mr. Lee.

7 MR. LEE: I'd like to mark --

8 THE COURT: You can't just show documents. Don't  
9 tell me what you want to do, get them marked and then tell the  
10 witness I'm showing you exhibits and then you'll show him a  
11 number.

12 (Pause.)

13 MR. LEE: I believe we're at Exhibit G.

14 So, I'm going to mark as Exhibit G, Your Honor --  
15 can I approach the witness?

16 THE COURT: You can.

17 MR. LEE: (Handing.)

18 (Pause.)

19 Q Do you recognize those bank statements?

20 A Yes.

21 Q Can you explain to the Court what they are?

22 MR. BAEK: Objection.

23 THE COURT: I'm sorry, what is the objection?

24 MR. BAEK: That's for the purpose of refreshing  
25 recollection.

*H. Kim - cross - Lee*

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1 THE COURT: How do we know that?

2 MR. BAEK: Isn't that what Daniel Lee stated?

3 THE COURT: No, he didn't say that. All he said so  
4 far is, I'm showing you some bank statements, can you identify  
5 what they are.

6 I'll hear in a minute what they are.

7 MR. BAEK: Okay. I apologize, Your Honor.

8 THE COURT: All right.

9 What are they, Mr. Kim?

10 THE WITNESS: Bank account -- statements from I  
11 believe either from the operation account or the payroll  
12 account, yeah -- no, payroll accounts.

13 Q What period are those bank statements?

14 A November 30, 2010.

15 Q Whose signature are on those checks?

16 (Pause.)

17 A That's mine, yeah.

18 Q Is it true that only managers received one week paid  
19 vacation?

20 A Yes.

21 Q Who were those managers that received one week paid  
22 vacation?

23 A John Lim, Gaspar Allende, Nilson Sacardi, yes, those are  
24 the managers, and I.

25 Q When I was trying to learn the business, who did I --

*H. Kim - cross - Lee*

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1 who did you tell me the decision makers of the restaurant  
2 were?

3 A Say again the question please.

4 Q When I was trying to learn the business, who did you say  
5 the decision makers of the restaurant were?

6 A When I met you, you told me that you going to be in  
7 control and I'm going to be keeping you --

8 MR. LEE: Your Honor, that's not the question.

9 THE COURT: I agree but the question was improperly  
10 phrased.

11 It presumes that he told you, Mr. Lee, who the  
12 decision makers of the restaurant were. Maybe he didn't tell  
13 you that. So, you have to first ask him: Did you tell me who  
14 the decision makers were.

15 Did you tell Mr. Lee when you were training him or  
16 making him familiar with the business who the decision makers  
17 of the business were?

18 THE WITNESS: Are you talking about managers?

19 THE COURT: If you don't understand the word  
20 "decision makers" I can understand that, just say so.

21 Q Well, let me --

22 THE COURT: Stop.

23 MR. LEE: Okay.

24 THE COURT: Do you know what he means by the word  
25 "decision makers," is that a word you ever used with him?

*H. Kim - cross - Goldberg*

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1 THE WITNESS: No --

2 THE COURT: Okay.

3 Next question.

4 Q When I was trying to learn the business and asked you who  
5 the key personnel were, who did you respond?

6 A The managers and head chef, those are the people know how  
7 the restaurant operated.

8 Q Can you please name their names at the time that I was  
9 there, who those managers were as of September 27th, 2010?

10 A John Lim, Gaspar Allende, Nilson Sacardi.

11 MR. LEE: Thank you.

12 That's it, Your Honor.

13 THE COURT: All right.

14 MS. GOLDBERG: I have two more questions. Can I be  
15 permitted to ask him two more questions?

16 THE COURT: Yeah.

17 MS. GOLDBERG: Thank you, Your Honor. Sorry.

18 THE COURT: Really, I mean the cross-examination was  
19 so protracted before, I really should not allow you to do this  
20 but if it is really two questions, you can have those.

21 MS. GOLDBERG: It is two questions, Your Honor.

22 CROSS-EXAMINATION (CONT'D.)

23 BY MS. GOLDBERG:

24 Q Mr. Kim, during the course of this litigation did you  
25 write a note to Leila in which you said: Leila, I hope all is

*H. Kim - cross - Goldberg*

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1 well with you. Thanks for all the years of hard work and care  
2 that you gave for the work in the restaurant for me  
3 personally. Remember that the door is always open if you  
4 need.

5 Did you write such a message to Leila?

6 A Yes.

7 MR. BAEK: Objection, Your Honor.

8 THE COURT: Sustained.

9 MR. BAEK: Also I ask the Court to strike.

10 THE COURT: Why? Questions are not evidence.

11 MR. BAEK: Thank you, Your Honor.

12 Q Does your father own the Green Field Churrascaria in  
13 California?

14 A Yes.

15 MR. BAEK: Objection, Your Honor.

16 THE COURT: Where is this going?

17 MS. GOLDBERG: That's it, Your Honor.

18 THE COURT: I think I knew that. All right.

19 Overruled. I have the answer.

20 MS. GOLDBERG: Thank you.

21 THE COURT: Any redirect?

22 MR. BAEK: Yes, Your Honor.

23 THE COURT: Okay.

24 THE WITNESS: Excuse me, I have this (indicating.)

25 THE COURT: What is that, the bank statements?

*H. Kim - redirect - Baek*

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1 THE WITNESS: Yes.

2 THE COURT: Mr. Lee, come get the bank statements  
3 you gave him.

4 (Pause.)

5 REDIRECT EXAMINATION

6 BY MR. BAEK:

7 Q Ms. Goldberg asked you the following question during the  
8 cross-examination: Can John Lim fire individuals? And your  
9 answer was: Yes.

10 Let me ask you another question. Can John Lim fire  
11 the individuals in the kitchen?

12 MS. GOLDBERG: Objection.

13 THE COURT: What is the objection?

14 MS. GOLDBERG: Your Honor, I believe this question  
15 is leading.

16 THE COURT: I don't think so.

17 You may answer.

18 A No. The only thing he can do --

19 THE COURT: Excuse me, there's no question pending.

20 Next question.

21 Q At the deposition you testified that Orlaino was one of  
22 the managers. What is the exact title of Orlaino?

23 A We actually -- I never call Orlaino as a manager until  
24 this day in court, we only call him as a maitre d'.

25 Q What is the difference between maitre d' and manager?

*H. Kim - redirect - Baek*

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1 A Well, the maitre d', his only concern is to make the  
2 customers be welcome. He has to spend time with the customers  
3 talking, receiving those people and plus organize the waiters  
4 and the meat runners, whenever they have to sing Happy  
5 Birthday to the customers, things related to the serving of  
6 the customers.

7 Q But would you consider Orlaino as a manager?

8 A Well, the closest definition we can say is manager.

9 Q Would you call -- withdrawn.

10 I would ask you a question like who are the managers  
11 and your answer would include Chef Sacardi; would you call  
12 Chef Sacardi manager?

13 MS. GOLDBERG: Objection.

14 THE COURT: What is the objection?

15 MS. GOLDBERG: Again leading.

16 I mean clearly Mr. Baek here is just wanting to ask  
17 questions to feed him yes or no answers, that's what's going  
18 on here, rather than the way a redirect should be done.

19 THE COURT: I agree.

20 I also consider it of no probative value that this  
21 witness would put a label manager on Mr. Sacardi. Obviously I  
22 know that's his position. I don't need to hear him express an  
23 opinion.

24 Go ahead.

25 MR. BAEK: Okay. If I may have just one moment, I'm

*H. Kim - redirect - Baek*

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1 just trying to clarify that during the cross-examination she's  
2 trying to impeach my client's credibility for not including  
3 Orlaino as the manager and also including Chef Sacardi as a  
4 manager where at the deposition he didn't.

5 MS. GOLDBERG: Your Honor --

6 MR. BAEK: He didn't ask (sic) Chef Sacardi as  
7 manager. I'm trying clarify during my redirect why he would  
8 do such a thing.

9 THE COURT: Ask him why did you characterize him  
10 this way in the deposition.

11 MR. BAEK: Okay.

12 THE COURT: Ask him that.

13 MS. GOLDBERG: Your Honor, I would also say that a  
14 long speech to Your Honor like that is clearly a way of --

15 THE COURT: I don't know, most --

16 MS. GOLDBERG: -- leading the witness as well. So,  
17 I would ask again that next time the witness be permitted or  
18 be asked to step out. Clearly it's obvious what Mr. Baek is  
19 trying to get from his witness.

20 THE COURT: Look, obviously one thing I have to do  
21 is evaluate the credibility of a witness. Let me assure you I  
22 have the ability to discern when a witness has been fed his  
23 answers, all right.

24 MS. GOLDBERG: Thank you, Your Honor.

25 THE COURT: Understand that. Any more questions,



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1 Mr. Baek?

2 MR. BAEK: No, Your Honor.

3 THE COURT: Thank you.

4 MR. BAEK: Thank you.

5 THE COURT: All right.

6 You may step down, sir.

7 (Witness steps down.)

8 THE COURT: Mr. Baek, any further witnesses?

9 MR. BAEK: Your Honor, not at this moment.

10 On the witness Leila Soares, if I may discuss just  
11 for a minute?

12 THE COURT: Okay.

13 Well, I'm not sure what you mean discuss. You have  
14 an application?

15 MR. BAEK: Application, Your Honor.

16 May we conduct a deposition in America  
17 telephonically? That's how we did it for Mr. Gaspar  
18 Allende since he's from California, in case she's unable to  
19 travel.

20 The only reason why I'm making that application is  
21 that -- it's the similar application I make before as to the  
22 cost. Mr. Hudson Kim and I are in a unique financial  
23 situation and I understand Ms. Leila is Mr. Hudson Kim's  
24 witness but it's really for the benefit of the other  
25 defendants and, therefore, I respectfully make an application

1 to conduct her deposition in America telephonically.

2 THE COURT: I'm not sure I understand what you mean.  
3 She would come to America?

4 MR. BAEK: Telephonically we would call Leila and  
5 Ms. Goldberg would be present and all the counsel and  
6 defendants would be present and we would ask -- we'll conduct  
7 our deposition accordingly and -- yes.

8 THE COURT: What is your response to that?

9 MS. GOLDBERG: Your Honor, I completely object to  
10 that. Again, I won't even know who is on the other end of the  
11 line. I would --

12 THE COURT: You'll know. You can have Mr. Sacardi  
13 there. He can tell you if it is Leila or not.

14 MS. GOLDBERG: But, Your Honor, she -- obviously  
15 there would be no sworn testimony.

16 THE COURT: Why?

17 MS. GOLDBERG: And, Your Honor, in the way that  
18 Mr. Baek has conducted the depositions, I also have a concern  
19 that he basically would give one leading question after  
20 another.

21 THE COURT: But then you'll have objections to form.  
22 I won't let any of those questions in and he will have wasted  
23 his time.

24 You know --

25 MS. GOLDBERG: Your Honor, I would just -- I would

1 submit as he's proposing it, it is completely unreliable to be  
2 submitted as credible evidence for the Court.

3 THE COURT: That may be. I may well find that and I  
4 see your point in that regard, particularly if I get a lot of  
5 conclusions which seems to be a lot of what I've gotten in  
6 this case rather than actual factual testimony.

7 MS. GOLDBERG: Your Honor, if I also might add, you  
8 know, when we discussed this and we did discuss this at the  
9 pretrial conference and actually I do have, if Your Honor  
10 would like, I do have it on my phone, the transcript, and we  
11 can review the language, it was discussed among counsel at  
12 that meeting and Your Honor said: "Is there -- I don't want  
13 to quote your exact words but you asked whether there was any  
14 objection to doing the testimony via video conference. There  
15 was no objection so you said okay.

16 I -- again, I instructed my client it was a heavy  
17 financial burden for them, it took them an extremely long time  
18 to arrange it. Just because it was inconvenient or it was a  
19 two hour trip should not excuse -- should not be a reason why  
20 they didn't have to carry the same obligation and, moreover,  
21 they didn't even raise it until the day of trial.

22 Maybe it might have been one thing if we had  
23 discussed it prior but I believe any which way it's completely  
24 unreliable and should not be permitted.

25 MR. HONG: Your Honor, if I may, I'd like to join

1 Mr. Baek's application, and use the telephonic deposition of  
2 my witness, Gaspar Allende, as an example.

3 Mr. Allende was in California, there was a very  
4 probable chance that he would be unable to be here to testify  
5 at trial which is why we conducted his deposition  
6 telephonically. Ms. Goldberg was there, I was there, Mr. Baek  
7 was there and a court reporter was here in New York to  
8 administer the oath and every counsel for all the parties had  
9 ample opportunity to question Mr. Allende in California and to  
10 analogize that to what Mr. Baek is asking for, I would see no  
11 problem and ask Your Honor to consider his request.

12 MR. BAEK: Your Honor, at the risk of sanction, it  
13 is my --

14 THE COURT: You're at no risk of sanctions,  
15 Mr. Baek, go ahead.

16 MR. BAEK: Not only did I put on page six in JPT0, I  
17 recall reading the exact language and we -- Your Honor, did  
18 not rule on the telephone issue.

19 THE COURT: No, I agree with you, I did not rule at  
20 that time. What I ruled was that video deposition -- video  
21 testimony would be okay.

22 MR. BAEK: That's right, Your Honor. So, I thought  
23 I had the two options and it was for me to speak with --

24 THE COURT: No, I did not rule that two options were  
25 okay. I ruled that video was okay. You then jumped to the

1 conclusion that, well, if the judge said video, then telephone  
2 must be okay too. That was an unjustified conclusion.

3 Here's what I'm going to do, if you want to do this  
4 testimony you've got to get a court reporter that is  
5 authorized to administer oaths under the laws of Brazil with  
6 the witness in Brazil. You'll have a U.S. court reporter  
7 here. The oath will be administered again under U.S. law  
8 here.

9 Then Ms. Goldberg is going to give you a bill for  
10 the cost of the video deposition that she took of her  
11 witness -- I'm sorry, the video testimony that she took of her  
12 witness. You're going to pay her half the cost of that video  
13 deposition. That has to occur within 30 days. I will then  
14 take designated portions of that deposition into this record.

15 All right. Anything else?

16 MR. LEE: Your Honor.

17 THE COURT: Yes, Mr. Lee.

18 MR. LEE: I'd like to make a motion to dismiss me  
19 from this case. It doesn't seem to be adequately proven --

20 THE COURT: This is not the time for that. You  
21 waived your right to move for dismissal of yourself from the  
22 case at the close of the plaintiff's case. You can make  
23 another motion when you've concluded your case.

24 First, though, I'm asking Mr. Baek, subject to the  
25 deposition ruling I've just made, are you resting?

1 MR. BAEK: If I may make an application on cost, can  
2 the defendants split the cost?

3 THE COURT: No, I will not require that. That's up  
4 to the defendants.

5 MR. BAEK: Okay.

6 Thank you, Judge.

7 THE COURT: Any further questions?

8 MR. BAEK: No, Your Honor. Defendant rests.

9 THE COURT: Okay.

10 Mr. Lee, any evidence from you?

11 MR. LEE: No, Your Honor. I'd like to just have the  
12 opportunity for a closing statement.

13 THE COURT: All right.

14 I just want to make sure you understand because  
15 you're pro se, you don't have to testify in your own behalf if  
16 you don't want to but if you don't, there's not sworn evidence  
17 from you in the case.

18 It's completely permissible for you to rely on the  
19 sworn evidence that has come in through other parties and  
20 through your own cross-examination, that's fine. I don't want  
21 you to think that the opening statement you made is evidence.  
22 It's not evidence. Okay.

23 If you want to tell your story under oath, I'll  
24 swear you in and you can tell your story under oath. I'll let  
25 you tell it in narrative form. Then you will be subject to

1 cross-examination.

2           You don't have to do that, you can rest on the  
3 record as it is but I just didn't want you to think that by  
4 giving me your opening statement, you've told me your story.  
5 The opening statement is just an outline of the proof. It is  
6 not evidence.

7           So, now do you want to rest or do you want to  
8 proceed?

9           MR. LEE: Your Honor, I feel there's enough evidence  
10 that was revealed during these testimonies and I'd like to  
11 decline and just have an opportunity to do a closing  
12 statement.

13           THE COURT: Okay. That's fine. Anybody else want  
14 to do closing statements?

15           MS. GOLDBERG: Your Honor, if you are permitting  
16 closing statements -- closing arguments, I would like to do a  
17 closing argument.

18           THE COURT: One way to do it, and I'll do this only  
19 if everybody is agreed, is I'll take a closing statement from  
20 Mr. Lee and the rest of you can brief it.

21           You are obviously at an advantage over him briefing  
22 the case but if you feel the need -- you could this way hear  
23 his closing statement and still put in your briefs and address  
24 it there if you want but, like I said, I'll do it however you  
25 want.

1           If Mr. Lee closes, Ms. Goldberg, you're sure you  
2     want to make a closing statement?

3           MS. GOLDBERG: Well, I certainly would like to do a  
4     post-brief so I'm not -- I'm not --

5           THE COURT: I'm going to be very flexible with this  
6     on the parties. We have the variable of Mr. Lee who's not a  
7     lawyer and, therefore, I think should have the right to make a  
8     statement and having given him the right to make a statement,  
9     I feel obliged if the parties really want to, and I'd ask you  
10    to consider whether it's necessary in light of the fact that  
11    you're going to give me post-trial briefs, to make your own  
12    closing statements but if you want to, I will hear them  
13    because I'm going to hear from Mr. Lee.

14           So, what do you want to do?

15           Mr. Lee is going to close. What does the plaintiff  
16    want to do?

17           MS. GOLDBERG: Your Honor, I would like to close and  
18    obviously I'd like to do a post-brief.

19           THE COURT: Okay.

20           The other defendants?

21           MR. HONG: Your Honor, I'll waive the closing  
22    statement and just submit the post-hearing brief.

23           THE COURT: Okay.

24           Mr. Baek?

25           MR. BAEK: I would respectfully submit on the brief.



*Summation - Lee*

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1 THE COURT: Okay.

2 Mr. Lee, let's hear your closing statement.

3 Mr. Lee, why don't you do it up here so the court  
4 reporter can get it down better.

5 MR. LEE: Your Honor, I'd just like to say this  
6 case, as you know, has dragged on for close to thirteen months  
7 and on. I can't -- I've lost count of the days and personally  
8 it's been going to hell and back.

9 There was a lot of back stories going on with this  
10 trial. The bigger thing was there are people in the parties  
11 on the defendants' side trying to pin me as the owner and  
12 that's why in the JPT0 you had so much evidence stating the  
13 opposite, such to the fact that on the -- they all stipulated  
14 they all understood, during discovery it was revealed that I  
15 was not the owner or was I never -- I was never the owner but  
16 that did not preclude, did not prevent, particularly on the  
17 defendants' side, on their own side trying to make me the  
18 owner and stick me with a one million dollar IRS tax bill and  
19 so the hell that put my family under was unbearable but,  
20 thankfully, we are able to overcome that first part.

21 MS. GOLDBERG: Your Honor, I --

22 THE COURT: I'm going to give him some leeway.

23 MS. GOLDBERG: Okay, Your Honor, go ahead.

24 MR. LEE: We were able to overcome that first part  
25 and now we're stuck with this. The reality of the matter, and

*Summation - Lee*

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1 it was revealed during this, during the case, I was never the  
2 owner and I was never the manager when Nilson Sacardi was  
3 there and timing is everything.

4 I had come to the restaurant on September 27th,  
5 2010. Nilson Sacardi left a little less than a month later.  
6 We literally had 18 days, and that's a conservative estimate,  
7 together, 18 days, and those 18 days have been a living hell.

8 During that time I had gone to the restaurant when  
9 Nilson was there maybe five to six times. Nilson was there  
10 about five to six times. We barely overlapped.

11 THE COURT: Mr. Lee, I feel obliged to just caution  
12 you again, you're giving me a whole bunch of facts in your  
13 closing that I cannot take into account in reaching a decision  
14 because they've not been introduced into the record.

15 Just like your opening statement is not evidence,  
16 this closing statement is not evidence. Evidence only comes  
17 in through sworn testimony. So, these things you're saying,  
18 you know, if you give me argument about why what I heard is in  
19 your favor, I can consider that argument, but if you're  
20 telling me additional facts like, you know, how many times you  
21 came into the restaurant, if there isn't something in the  
22 record in sworn testimony that already shows that, I can't  
23 take any account of that in reaching a decision.

24 Do you understand that?

25 MR. LEE: Okay, Your Honor. Well, let's go to the

1 case then and go to the participants of the case.

2 John Lim on record has said that I made no changes  
3 to the restaurant. He furthermore said I was gathering  
4 information which is fair, which is a fair statement, because  
5 I came from corporate America and was trying to learn the  
6 restaurant business.

7 No one in these testimonies ever mentioned my name  
8 as a manager and that is very, very important. I never ever  
9 managed Nilson Sacardi or any part of the restaurant when  
10 Nilson Sacardi was there and left the restaurant and this  
11 whole time explaining this to my wife is a mystery why I'm  
12 even here because 18 days of just observing has led me dragged  
13 into a thirteen month lawsuit.

14 The reality is I would have loved to had a lawyer to  
15 defend myself and to -- I mean obviously I'm not well versed  
16 in semantics. The reality is lawyers are expensive and I  
17 can't afford it and that's why I am pro se but I feel that  
18 over the time, over this case the truth has been revealed and  
19 there's no way I could have managed a big operation of that  
20 size in one month.

21 The evidence showed with the bank statement who was  
22 still signing the checks of Green Field Churrascaria, Inc. and  
23 that was Hudson Kim. Hudson was teaching me the restaurant.  
24 I was learning the restaurant to see if I would eventually  
25 purchase the restaurant subsequent to, there were a lot of

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1 obviously provisions, one being the huge outstanding tax bill  
2 that was there that was overhanging the whole corporation but  
3 I never purchased the restaurant and that was stipulated as a  
4 fact.

5 I never managed the restaurant during the time  
6 period that Nilson Sacardi was there.

7 MR. BAEK: Your Honor.

8 THE COURT: Yes, Mr. Baek.

9 MR. BAEK: Mr. Daniel Lee is misstating the facts as  
10 to the stipulation.

11 THE COURT: So what? It is closing argument.

12 MR. BAEK: But he's misstating what was stipulated  
13 to.

14 THE COURT: It doesn't matter, it is closing  
15 arguments. I'll be governed by the stipulations. I'm not  
16 governed by closing argument. Closing argument is only to  
17 persuade, it is not to offer any facts.

18 I'm not going to be persuaded by something that is  
19 contrary to a stipulation.

20 MR. BAEK: All right. Thank you.

21 MR. LEE: But despite my distaste, and I don't know  
22 if that's the right word, for the Kims and all that they have  
23 put me through, I will not take revenge and I will not lie on  
24 the record. I will tell the truth. During my due diligence  
25 and everything I observed Nilson Sacardi was the head chef.

*Summation - Lee*

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1 It was undeniable. Any layperson could have observed that.

2 A restaurant that big doesn't run itself. When you  
3 have 500 guests to feed on a particular night, somebody has to  
4 man the ship and that man was Nilson Sacardi and I observed  
5 that. He had assistants, Alberto, Alejandro, Sergio, Leila,  
6 and I observed him giving orders, that's a fact.

7 And I'm not here to go back to take vengeance on the  
8 Kims and tell a lie. I will tell the truth. Because I was  
9 subjected to a lot through the thirteen months and I've heard  
10 lies during these days of week depositions but I will not take  
11 vengeance, I will tell the truth, the time I was there and  
12 everything I observed learning the operations of the  
13 restaurant Nilson Sacardi was the head chef.

14 Your Honor, I hope you have mercy and just end this  
15 thirteen months of hell so I can move on with my life and find  
16 a job and support my growing family.

17 Thank you, Your Honor.

18 THE COURT: Thank you, Mr. Lee.

19 Ms. Goldberg, are you sure you don't want to save it  
20 for a brief?

21 I'll let you go, I'll let you do it if you want.

22 MS. GOLDBERG: Your Honor, I'll put it in a brief.

23 THE COURT: Okay.

24 Let's talk about timing. I'd like to have the  
25 briefs within 21 days. How does that grab people?

1 MR. HONG: Your Honor, there is the concern about  
2 when the trial transcript will come out because we're going to  
3 need that to actually write and submit the brief. So, if it  
4 doesn't come out, if it's not available to all the parties as  
5 early in that 21 day period, we may not have time to actually  
6 make our submissions.

7 THE COURT: Okay.

8 MS. GOLDBERG: Your Honor, I would also say if  
9 Mr. Baek does intend to go forward with Leila Soares'  
10 testimony, that could also be problematic.

11 THE COURT: Okay. Let's go off the record a  
12 minute.

13 (Off the record discussion.)

14 THE COURT: So, if the parties have the trial  
15 transcript in a week, what's wrong with 21 days after  
16 that?

17 MR. HONG: 21 days from the time it's made available  
18 I have no problem with.

19 THE COURT: Anyone have a problem?

20 MS. GOLDBERG: Your Honor, I don't have a problem,  
21 I'm just not quite sure if Ms. Soares' deposition is going to  
22 go forward and how that would play into including that  
23 testimony into an argument.

24 THE COURT: We don't know what Mr. Baek is going to  
25 do. He's going to let us know by Friday. If an adjustment of

1 the schedule is necessary because he goes forward with Soares,  
2 then I'll make an adjustment but for now let's have post-trial  
3 briefs in by February 27th.

4 MS. GOLDBERG: I'm sorry, did you say February 27th?

5 THE COURT: Yes.

6 And let's have reply briefs in by March 12th. All  
7 right.

8 MS. GOLDBERG: Your Honor, is there a page limit on  
9 the post-trial brief?

10 THE COURT: No, I'm not going to impose a page  
11 limit.

12 I am going to tell you that I'm a pretty quick  
13 study. You don't have to beat me over the head with anything.  
14 I have a familiarity with the law in this area so I don't need  
15 pages and pages of boilerplate legal principles and I'll just  
16 remind you of the generally applicable adage that more is less  
17 when it comes to briefing before a judge who is focused on and  
18 familiar with the case.

19 I understand lawyers never want to take a chance  
20 what if the judge doesn't appreciate this or that or this  
21 particular case, I understand that risk, I've been a  
22 practitioner but I've been following this case closely, I know  
23 the law and the effort I believe should be to persuade me, not  
24 to educate me.

25 Having said that, if somebody wants to give me a 50

1 page brief, you know, that's fine. I would say particularly  
2 it's in the plaintiff's interest to keep the briefing as short  
3 as possible because the plaintiff is not going to get paid if  
4 at all until the case is decided.

5 MS. GOLDBERG: And Your Honor, the post-trial brief  
6 and the reply are to be submitted on ECF, correct?

7 THE COURT: Yes, everything is on ECF but I would  
8 like a courtesy copy of the briefs as well.

9 MR. LEE: Your Honor, I guess I'm not subject to  
10 this?

11 THE COURT: You're welcome to put in a brief, Mr.  
12 Lee, if you'd like to, you're under no obligation to.

13 MR. LEE: So, by February 27th some sort of written  
14 statement?

15 THE COURT: That's correct.

16 MR. LEE: Does that entail in terms of putting  
17 quotes from the transcript in evidence into that?

18 THE COURT: Usually you don't quote unless it's  
19 something really significant. Usually you just cite me to the  
20 page of the transcript, okay, and I will then consult the  
21 transcript and see if it says what you say it says.

22 MR. HONG: Your Honor.

23 THE COURT: Yes.

24 MR. HONG: Would you require the submissions to be  
25 bound by a particular service or professionally bound?



1 THE COURT: I don't care if they're heavy duty  
2 stapled as long as they don't come apart, okay.

3 MR. HONG: Okay.

4 THE COURT: I want them in a manner where I don't  
5 get a bunch of loose pages.

6 MS. GOLDBERG: And Your Honor has a copy of the  
7 exhibits?

8 Should we also attach a copy of the exhibits that  
9 the Court already has?

10 THE COURT: No, you can simply refer me to the  
11 exhibits.

12 You should make sure I have all the exhibits. I  
13 think I do but if I'm missing any --

14 Mr. Lee, those are not in evidence. If you're  
15 talking about the bank statements, they were not offered and  
16 they were not received in evidence.

17 So, the parties should make sure I have everything  
18 that was admitted into evidence.

19 Anything else?

20 MS. GOLDBERG: No, Your Honor.

21 MR. BAEK: Your Honor, I just want to make sure, I  
22 think defendant Hudson Kim admitted one exhibit into evidence,  
23 that's the Kitchen Employee Schedule.

24 THE COURT: Yes, that's Exhibit G. I have that.

25 MR. BAEK: Okay. Thank you.

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1 THE COURT: Okay. All right.

2 Thank you all very much for your efforts. No doubt  
3 we will hear from each other again.

4 Thank you.

5 (Time noted: 11:55 a.m.)

6 (End of proceedings.)

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